

APPROVED

**STATE ADVISORY COUNCIL ON THE
EDUCATION OF CHILDREN WITH DISABILITIES**

**February 2, 2007
Carmel Educational Service Center
Indianapolis, IN**

ADVISORY COUNCIL MEMBERS PRESENT:

B. Marra D. Schmidt, D. Geeslin, G. Bates, J. Swaim, S. Tilden, K. Farrell, J. Swiss, J. Nally, R. Kirby, M. Johnson, C. Shearer, B. Kirk, D. Downer, R. Burden, C. Endres, Lilia Teninty, K. Mears

ADVISORY COUNCIL MEMBERS NOT PRESENT:

Stephanie Beasley, Mary Ramos, B. Lewis, J. Hammond, Cathlene Hardy Hansen, Bessie Henson

DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:

Paul Ash, Kylee Bassett, Nina Brahm, Becky Reynolds, John Hill, Tracy Brunner

GUESTS:

Sharon Knoth

VISITORS

Loui Lord Nelson (R.A.I.S.E.), Jennifer Akers (Parent), Mary Jo Germani (ISHA); Margaret A. Jones (Parent), Patricia Piers (NISEC), Gayle Foy (ASK); Kathryn A. Lee (Indiana Civil Rights Commission); Alexandra M. Curlin (Curlin Law Office), a Marshall Shillip (Indiana University Student)

INTERPRETERS:

Amy Evans and Rebecca Madigan

MEETING

D. Schmidt opened the meeting at 8:45 a.m.

D. Schmidt thanked J. Swaim for chairing the meeting on January 12, 2007.

MINUTES

The minutes from the January 12, 2007, meeting, were approved with no amendments.

BUSINESS

Meeting Dates, Times and Locations

B. Reynolds discussed meeting space at the Division of Family and Children. She stated that it was not easily accessible and parking was limited.

K. Farrell stated that Washington Township's community room would be available but if a board meeting were called that meeting would take precedence.

D. Geeslin offered the Indiana School for the Deaf (ISD) conference room. J. Swaim said that the point of relocating was to be closer to I-465 and that the location of (ISD) was not. J. Swaim inquired with regard to alternating meeting sites. K. Farrell indicated that changing facilities on a month to month basis may cause loss of interest and confusion for members and visitors. J. Nally offered Penn Products located at 71st and 465 as a meeting location after Article 7 is revised. J. Nally also stated that downtown meeting locations should not be considered until after the legislative session is finished.

Member update

B. Marra said that there were a couple of members that did not want to participate any longer, and stated that if there were any other members that were in attendance that did not want to continue to be on the council, they need to let him know privately.

Change of date for Pike/West Central Joint Services from March to April

B. Marra stated that Pike Township would like the council to consider it withdrawal from West Central Joint Services in April instead of March. He added that there are three other programs that are considering reorganization. B. Marra said adequate yearly progress (AYP) and fiscal matters require the council to consider the withdrawal as soon as possible.

PUBLIC COMMENT (Audience comments, if any)

There were no comments from the public.

ARTICLE 7 DISCUSSION

1. RULE 18 GENERAL PROVISIONS

511 IAC 7-18-4: Use of public and private insurance proceeds

J. Hill and T. Brunner spoke to the SAC regarding Medicaid billing by the schools for the provision of specific services to students with disabilities. Approximately 50% of the schools in the state have billed Medicaid for some services at one point in time. As fiscal resources are stretched further, more schools are looking at creative ways to provide services to students. The Medicaid process involves comprehensive documentation in order to be accessed. With increased accountability provisions, schools have found this to be a nice fit with their plans and in turn have increased the amount of access and use for Medicaid services.

Parental consent is an issue that has been discussed in detail at the state and national level. Two years ago, Indiana began requiring schools to obtain parental consent prior to billing Medicaid for services. With the assistance of what was the Indiana Parent Information Network (IPIN) (now About Special Kids, (ASK)) a brochure was developed to explain to parents why Medicaid was being billed for services being provided by the school. It became rather cumbersome because Medicaid required that parental consent be acquired each time a service was provided. When J. Hill began working with Minnesota, they had interpreted each 'time' as being each individualized education program (IEP), not each time the service was delivered. OSEP has concurred and issued a letter in this regard. However, there is some disagreement regarding this interpretation.

N. Brahm pointed out that 7-33-4(a)(4) has been amended to reflect this concept. The language that she has added states, "obtain informed parental consent, as defined by 511 IAC 7-32-17, each time that access to public benefits or insurance is sought, consistent with the timeframe of the individualized education program."

R. Kirby asked if the parental consent has to be a separate consent form or can it be a part of the whole IEP? J. Hill stated that best practice would have the form and consent be separate and very specific. J. Swaim asked if there could be a statement of some sort that indicates that parental consent must be obtained annually. J. Hill said that it isn't necessarily annually. It is only when a Medicaid eligible service is billed. Additionally, some students may have more than one IEP in a given year. G. Bates asked what constitute Medicaid eligible services. J. Hill stated that schools are allowed to bill for occupational therapy, physical therapy, psychological evaluations, speech-language therapy and counseling.

The child must be eligible for Medicaid, and the services must be listed in the IEP. Additionally the provider must meet licensing requirements. K. Farrell asked whether a speech therapist had to have their clinical competencies (C's)? J. Hill said that they must either have their C's or have had their C's in the past. In order to keep the certification active, the therapist must be an active member of the American Speech and Hearing Association (ASHA). Since Indiana does not require therapists to maintain membership in ASHA, many don't pay the dues. The Federal Government also permits a therapist who graduates and who could have received their C's, but didn't apply or take the exam, are eligible as a Medicaid provider. J. Hill stated that transportation is also being considered as a potential billable service, as are nursing services. The federal government is opposed to providing reimbursement for transportation since the schools must provide it already. However, the same argument could be used for the provision of OT, PT, etc.

J. Nally asked if the Medicaid billing provision would be applicable to students enrolled in the Department of Correction. T. Brunner indicated that there is a provision that disallows the billing of Medicaid services for students who are incarcerated. T. Brunner added that the 590 program is state funded program that helps provide medical services to individuals who are incarcerated.

K. Farrell stated that she feels the language, as it is provided in the current draft of Article 7, is very clear and easily understood. C. Shearer asked who pays for paraprofessionals in schools. J. Hill said that in Indiana personal assistants are not a part of the State Medicaid Plan and therefore cannot be billed. D. Geeslin asked about parental concerns regarding impact on the rest of their family's needs. J. Hill stated that yes, some parents have been concerned, but there really is no need to be. The only real problem that could occur is that if the child is on a Medicaid waiver program with a cost-cap, and the school's billing pushed the child over that cost cap. However, the chances of this occurring are quite slim.

R. Kirby asked if it would be 'going beyond' if we added language that it must be separate parental consent. K. Farrell said that her district has been advised that a separate form be used so that if there is an audit, the form can be provided. B. Marra stated that we are looking at informed parental consent as being a separate consent, different or in addition to the consent for the IEP and services. J. Swaim asked if the parent will see what the school is billing for? B. Marra asked if the parent has a right to see the billing. T. Brunner said that the parent can ask Medicaid to show them what was billed by the school. B. Marra stated that if the school cannot prove that the services were provided, they could be mandated to return the funds to Medicaid. J. Swaim asked if the parent could complain that the IEP was not implemented. J. Hill stated that some schools are actually using the tracking system for services for all kids. K. Farrell indicated that the framework for Medicaid billing is in 'units', which could be very different

than the time frame specified in the student's IEP. J. Hill said that quite frequently the time units are different.

B. Kirk referred to J. Swaim's comment with regard to parents not knowing when or whether the child is receiving the services as specified in the IEP. How does the parent know that Medicaid is being billed if the services are not being provided? J. Hill stated that the fact that the school is billing Medicaid throws in another check and balance, as there could be an audit by Medicaid. M. Johnson stated that the school has an obligation to fulfill the services in the student's IEP and they must make up services if they are 'missed' due to absences, maternity leave, etc. C. Shearer stated that there is also the Office of Inspector General audit that will aid in accountability.

K. Farrell motioned the revised language for 511 IAC 7-33-4 be accepted as written. Seconded by J. Nally and M. Johnson.

13 Approved; 0 Opposed; 1 Abstained.

2. Follow-up issues from the January 12, 2007 meeting

N. Brahm referred the council to the memorandum titled, *Follow-Up Issues from the January 12, 2007 Meeting of the State Advisory Council*. B. Marra asked the SAC to review the memo, with discussion to follow the review.

B. Marra discussed the goal of having a draft of the revised Article 7 in June. After a draft is completed, he wants to hold informal public meetings to seek input on the draft. This would allow him to present a document to the State Board of Education in the fall.

N. Brahm discussed the first issue in the follow-up memo regarding educational records and teacher notes. She explained that any correspondence created by a public employee, including emails, are publicly available through the Access to Public Records Act. E-mails pertaining to specific students become part of the students' educational records. Schools need to have policies in place that caution employees about the contents of e-mail messages. Article 7 states that any document shared with another individual (e.g., e-mails), becomes a public record.

N. Brahm next discussed issue two in the follow-up memo, which was a rewrite of 511 IAC 7-2338-1(ij). She asked the SAC to review the revised language. D. Schmidt asked if an adult student can access their educational record and destroy the record. N. Brahm stated that only the school has the authority to destroy the record.

J. Nally said that this language in this subdivision was reviewed by his general council at the Department of Correction. The general counsel was fine with the

language. N. Brahm noted that the general counsel for the Department of Child Services was still reviewing the language.

N. Brahm discussed item three in the follow-up memo. Sometimes when a private school student transfers to a public school, the private school refuses to forward the student's records because the student's parent owes the private school tuition. N. Brahm discussed the matter with DOE's Office of Student Service's Gaylon Nettles. He stated that parents can go to small claims court. This is a fairly inexpensive process, and often successful.

N. Brahm discussed item four on the follow-up memo. At the January 12th meeting, the council discussed the 13 exceptions that allow schools to disclose student records without parent consent. S. Beasley from the Department of Child Services wanted to know which exception allowed her agency to obtain student records sans parent consent as part of an investigation of educational neglect or abuse and neglect in an educational setting.

N. Brahm explained that there is actually a new exception applicable to Department of Child Services in the proposed rewrite of Rule 23 that is based on 34 CFR § 99.31(a)(5) and IC § 20-33-7-3. The exception reads as follows:

511 IAC 7-2338-1 Access to and disclosure of educational records

(~~qs~~) The public agency may allow access to, or disclose information from, an educational record without consent of the parent or eligible student under any of the following conditions:

(5) The disclosure is to a state or local juvenile justice agency for the purposes set forth in IC 20-33-7-3.

Under the Indiana statute that creates the exception, school corporations *may* disclose records without parental consent if certain conditions are met. J. Nally noted that the word "may" explain why schools do not always forward student records to the Department of Correction. N. Brahm explained that if a school is unwilling to forward student records to the Department of Correction, the parents (or student who is at least 18 years of age) could get the records from the school.

3. RULE 23 CONFIDENTIALITY OF INFORMATION

511 IAC 7-23-1: Access to and disclosure of educational records

Note: subsections (n) thru (w) were preliminarily approved by the council on 1-12-07. Accordingly, only (a) thru (m) were discussed and voted upon.

J. Nally motioned to accept the changes to the language in 511 IAC 7-23-1(a) thru (m). Seconded by J. Swiss.

13 Approved; 0 Opposed; 0 Abstained.

4. RULE 24 EDUCATIONAL SURROGATE PARENTS

N. Brahm stated that the term “ward of the state” is defined in IDEA ‘04. In Indiana, incarcerated persons are by definition “wards of the state.” N. Brahm added a clause clarifying that educational surrogate parents did not have to be appointed for wards of the Department of Correction unless the student does not have a parent. The council decided to table a vote on 511 IAC 7-39-1 and 2 until C. Enders arrived to vote. The discussion on this issue resumed upon C. Enders’ arrival.

N. Brahm explained that temporary educational surrogate parents can be employees of shelters providing care to unaccompanied homeless children. C. Endres stated that she worries that someone employed by a school serving in that role would have a conflict of interest. Under McKinney-Vento, each LEA has a liaison who serves the needs of homeless youth in the district. Those individuals are employees of the school, yet are arguing for the rights of the child. R. Burden inquired as to how ‘temporary’ is defined? N. Brahm responded that it is not defined. In the comments to the regulations, OSEP declined to define the term. K. Farrell reminded the SAC that the intent is to get services to the child. R. Burden would like to define temporary as 30 days.

M. Johnson moved to accept the following language as the new 7-39-2(d): **For unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary educational surrogate parents without regard to subsection (b), subdivision (1) until a permanent educational surrogate parent can be appointed that meets all of the requirements of subsection (b).** Seconded by D. Geeslin. 13 Approved; 1 Opposed; 1 Abstained.

C. Enders moved to amend the language at 7-39-2(d) to: **For unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary educational surrogate parents without regard to subsection (b), subdivision (1) until a non-temporary educational surrogate parent can be appointed that meets all of the requirements of subsection (b).** Seconded by R. Kirby. 15 Approved.

J. Swiss moved to amend 7-39-2(h) to read: **In meeting the training requirements set forth at 7-39-2(a)(3),** the public agency must provide training or contract with another agency to train educational surrogate parents about special

education laws and rules in order to develop a pool of educational surrogate parents from which the public agency may draw. Seconded by J. Swaim. The discussion was that the SAC liked the intent but would like N. Brahm to work on the wording. 15 Approved.

D. Schmidt asked the council to vote for the entire rule of 7-39. So moved by J. Swiss, seconded by G. Bates.

12 Approved; 1 Opposed; 1 Abstained.

R. Kirby referred to section 2 (a) "shall" or on (h) "may". Why not shall in each sentence. B. Marra said that (h) is the option. Discussion on language change ensued.

R. Burden asked if there should be a time limit on temporary educational surrogate. G. Bates stated that the public agency only has 30 calendar days to find the surrogate parent so wouldn't that be the time limit. B. Marra concurred. M. Johnson asked with regard to a temporary surrogate parent and when the child moves to another area. Would that temporary surrogate parent still stay with the child? How would they be able to represent the child if they are no longer at the shelter? Discussion ensued. R. Burden asked for confirmation as to when the temporary surrogate parent is assigned. N. Brahm read from federal regulations. C. Endres discussed McKinney Vento and other issues.

J. Nally asked if the rule is suggesting that anyone can be a surrogate parent or temporary. C. Endres stated that it would only be the people that are listed in the rule. J. Nally said that if they have a pool of people trained to be surrogate parents why even assign a temporary. K. Farrell said that even though there may be a pool of trained surrogate parents, there still needs to be that temporary availability to ensure that the child is being represented.

D. Schmidt asked the council to vote on the proposed changes for the entire rule (Rule 24). J. Swiss motioned to accept the proposed changes. G. Bates seconded.

12 Approved; 1 Opposed; 1 Abstained.

5. RULE 29 DISCIPLINE PROCEDURES

511 IAC 7-29-1: Suspension. N. Brahm referred to TABLE 5 attached to the follow-up memo. N. Brahm noted that there were no removals to an interim alternative education setting (IAES) in 2005 for dangerous students.

C. Shearer asked how you determine a child's primary disability if the child has more than one disability. D. Schmidt said that the case conference committee makes this determination. Discussion ensued.

S. Tilden referred to page 2 of Table 5 and noted that there were a disproportionate number of black and non-Hispanic students suspended for more than 10 days. He also questioned the small number of Hispanic students in the count. B. Marra said that he would get the disproportionality data for S Tilden.

K. Farrell reminded the SAC that the reason this data was brought forth was because it has been proposed that parental permission not be required for schools placing students into an IAES for weapons, drugs, and serious bodily injury. K. Farrell noted that the data in Table 5 demonstrates that there are very few students put into such placements. If we remove the requirement that a parent consent to placement in an IAES, not many students would be impacted. R. Burden asked if we give schools unilateral authority to make this decision, it might impact the number of students placed into an IAES. B. Marra stated that most schools are going for a one year expulsion for weapons. However, serious bodily injury is new, thus we do not know how this will impact IAES placements.

N. Brahm asked if SAC wanted to go through each item individually again or review and ask questions.

D. Schmidt suggested a motion to accept rule as a whole.

J. Nally moved to accept the whole rule (1) through (9). M. Johnson seconded.

Discussion ensued about the requirement that parents put their concerns in writing (511 IAC 7-44-7(b)). There is concern that the parents can no longer express their concerns orally. Who is responsible for informing parents that their concerns be put in writing? B. Kirk asked if this is a federal requirement or can we go back to what we had? B. Marra stated that it is the prerogative of the SAC. The SAC can go beyond federal language, but the State Board could require us to go with the federal language. B. Marra confirmed that the language that is proposed is from federal law. R. Burden stated that it is his concern that parents do not know what to write. D. Downer said that this is an issue since the parent does not know what to say to ask for their child to be tested. S. Tilden requested that the language be changed so the parent could express concern to a school official and the school would put in writing the parents request. G. Bates said that he feels that the concerns that R. Burden may have are with regard to making sure that the parent's concerns get implemented. C. Endres asked if a teacher is unwilling to sit with the parent and help write this out, what would make that teacher express those concerns to their supervisor. R. Burden concurred.

J. Swiss asked with regard to not having written documentation of some kind, would the student be able to request in writing if they feel that they are having a problem themselves. K. Farrell indicated that while she understands the concerns of the council, this is language deals with discipline. B. Kirk said that she agrees with J. Swiss's comments that a student should be able to come to school personnel with regard to a problem. D. Geeslin commented that he

agrees with J. Swiss. The first thing the Indiana School for the Deaf (ISD) looks at is what issues the student may be having with the parents, and then lets the students self report. These are the best practices for the ISD. C. Endres stated that the student 'self-reporting' is aligned with the conceptual framework of McKinney Vento. D. Downer expressed said she doesn't mind the language, but worries how a parent will be protected if they are not literate? K. Farrell reminded council again that this is only for the discipline section of 511 IAC 7-44-7.

R. Burden conceded that his concerns did not really belong in this section, but more in the child find referral section. L. Teninty moved to table the discussion. A vote on approving the changes to Rule 29 was taken.

5 Approved; 6 Opposed; 0 Abstained.

ARTICLE 7 COMMENTS FROM THE PUBLIC

No comments were made.

OTHER BUSINESS

P. Ash spoke to the council about the State Performance Plan and the Annual Performance Review (SPP/APR) process, and stated that it was given to OSEP on 2/1/07. He asked the council to review the plan which would be available on the Division of Exceptional Learners' website the first part of February 2007.

B. Marra asked the council to review Rule 44 (formerly Rule 29) and let N. Brahm know in the interim of any concerns so that language can be voted upon at the March 2, 2007 meeting.

B. Marra also asked that council to review the materials on comprehensive plans.

B. Marra stated that L. Lord Nelson would present language on technical assistance and training at the next meeting. This language will replace the comprehensive system of personnel development section.

R. Burden requested that in the future we vote on rules section by section rather than trying to vote on entire rules at once.

MEETING ADJOURNED AT 2:50 P.M.